

fees which are thought to be due are properly authorized in the (2-month) Extension of Time which is enclosed.

In response to the Non-Final Office Action mailed 09/24/99 as Paper No. 9 (hereinafter, "Action"), Applicants respectfully request favorable action based upon the above amendments and the accompanying remarks.

I. Restriction Requirement

At page 2 of the Action, the restriction requirement is made final and Claims 7, 22, and 26-33 are withdrawn from consideration. The Action acknowledges Applicants' traversal of this restriction requirement as filed in Paper No. 7.

In response to the restriction requirement discussed above, Applicants above cancel Claims 7, 22, and 26-33. In lieu of pending Claims 1-6, 8-21, 23-25, and 34-35, Applicants above cancel those claims and add new claims 36-98 [all of which Applicants believe are properly drawn to elected subject matter].

II. 35 U.S.C. § 112, 2nd ¶ Rejection

At pages 2-3 of the Action, Claims 1-6, 8, 11-18, 21, 23-25, and 34-35 are rejected under 35 U.S.C. § 112, 2nd ¶ as allegedly being indefinite. For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

Applicants note that newly added Claims 36-98 are pending

in lieu of Claims 1-6, 8, 11-18, 21, 23-25, and 34-35. The terms "activity enhancer" and "glidant" are clear as stated within independent Claim 36. The Examiner's attention is respectfully directed to that portion of the application as originally filed which provides a suitable explanation of the term "activity enhancer" [i.e., page 10, line 15 -page 11, line 5] and of the term "glidant" [i.e., page 11, lines 6-12]. Claim 81 at (d) and Claim 82 at (c) provide particular examples of an activity enhancer. Claim 81 at (e) provides particular examples of the glidant. Throughout Claims 36-98, abbreviations are spelled out upon their first appearance. In this regard, the Examiner's attention is respectfully directed to: Claim 70 at (a) for EPV; Claim 72 at (a)(1) for NPV; and Claim 72 at (a)(2) for GV. With respect to "an *Autographa californica* NPV selected from the group consisting of V8vEGTDEL, V8vEGTDEL-AaIT, AcMNPV E2, AcMNPV L1, AcMNPV V8, AcMNPV Px1, and mixtures thereof" which appears in Claim 72 at (a)(1), all of the terminology is clear. In this regard, the Examiner's attention is respectfully directed to that portion of the application as originally filed which provides a suitable explanation of the terminology [i.e., page 7, lines 15-24].

For the foregoing reasons, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 112, 2nd ¶ Rejection.

III. 35 U.S.C. § 112, 1st ¶ Rejection

At pages 3 of the Action, Claims 1-6, 8-21, 23-25, and 34-35 are rejected under 35 U.S.C. § 112, 1st ¶ as allegedly lacking a written description in light of the "coated" terminology. For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

Applicants note that none of newly added Claims 36-98 use the allegedly offending "coated" terminology. Moreover, Claims 36-98 satisfy the requirements set forth at 35 U.S.C. § 112, ¶¶ 1-6.

For the reasons presented above, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 112, 1st ¶ Rejection.

IV. 35 U.S.C. § 102(b) Rejection - Bohm

At pages 3-4 of the Action, Claims 1-6, 8-10, 13-21, 23-25, and 34-35 are rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by USPN 4,948,586 (hereinafter, "Bohm"). For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

The Examiner's attention is respectfully directed to the 2 independent claims among the newly added claims [i.e., Claims 36 and 88]. Bohm appears to disclose microencapsulated pathogens and related processes which employ organic solvents. Bohm

further employs a polymer "dissolved in polyethylene glycol or another suitable solvent such as pyran, propylene glycol, a methylene chloride and propylene glycol mixture, furan, tetrahydrofuran or tetrahydropyran." [Bohm, column 5, lines 64-67]. In direct contrast to this teaching, Applicants' invention does not use organic solvents; rather, it uses a water-based system. There are additional differences between Applicants' invention and the cited reference. Bohm does not appear to disclose nor suggest at least 3 features of the present invention. These 3 features are:

- an aqueous mixture [Claim 36 at (a)];
- the polymer "is partially solubilized due to the action of the base [Claim 36 at (b)]; and
- the pH of the aqueous mixture "is less than the polymer's solubilization pH" [Claim 36 at (c)].

For the reasons presented above, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 102(b) Rejection based on Bohm.

V. 35 U.S.C. § 102(b) Rejection - Ahmed

At pages 4 of the Action, Claims 1-6, 8-21, 23-25, and 34-35 are rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by European Patent Application No. EP0697170A1 published on 02/21/96 having the sole inventor Fakhruddin Ahmed

(hereinafter, "Ahmed"). For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

In brief, Ahmed appears to disclose technology that: does not anticipate the present invention; does not suggest the present invention; and explicitly and affirmatively teaches away from the present invention. The Examiner's attention is respectfully directed to the following portion of Ahmed: page 4, lines 30-34 and Claim 1 at (b) on page 18. At page 4, lines 33-34, Ahmed reads: "Therefore it is preferred to select an amount of base which will adjust the pH to about 8.5 to 10 to ensure ready solubilization and lessen the chance of deactivation." (emphasis added). The emphasized portion is the exact opposite of Applicants' present invention. In this regard, the Examiner's attention is respectfully directed to those portions of the application as originally filed which shows that only partially solubilized polymers (not fully solubilized polymers) are features of the Applicants' invention: page 2, lines 18-24; page 4, lines 3-13; and page 9, lines 3-15. See, for example, the following direct quote from the specification.

"In a preferred embodiment of the process of this invention, the methyl methacrylate/methacrylic acid copolymer is partially solubilized with base to reduce agglomeration of the copolymer particles prior to

drying. However, it should be understood that the amount of base added is well below the amount required to fully solubilize the copolymer." [page 9, lines 3-9, *emphasis added*].

Each of Claims 36 and 88 explicitly and affirmatively states that the polymer is "partially solubilized". Thus, Applicants' above arguments are consistent with the scope of the claims.

For the reasons presented above, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 102(b) Rejection based on Ahmed.

VI. 35 U.S.C. §102 (e) Rejection - Miller

At page 5 of the Action, Claims 1-6, 8-21, 23-25, and 34-35 are rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by USPN 5662897 (hereinafter, "Miller"). For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

In comparison with the present invention, Miller (like Ahmed as discussed above) fully solubilizes/dissolves the polymer. Miller states at column 23, lines 52-53: "The Eudragit is dissolved by adjusting the pH to between 9.0 and 9.5." In light of this teaching (and the above detailed analysis of Ahmed), Applicants' present invention is not anticipated by Miller.

For the reasons presented above, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 102(e) Rejection based on Miller.

VII. 35 U.S.C. § 103(a) Rejection - Bohm/Ahmed/Miller in view of

Rheaume

At page 6 of the Action, Claims 1-6, 8-21, 23-25, and 34-35 are rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Bohm/Ahmed/Miller in view of USPN 5560909 (hereinafter, "Rheaume"). For the reasons discussed below, Applicants respectfully request favorable reconsideration of this rejection.

Within the context of Bohm/Ahmed/Miller as discussed above, Rheaume does not supply the requisite feature to properly support an obviousness rejection. Assuming *arguendo*, that Bohm/Ahmed/Miller fairly teach or suggest all features of the present invention other than the following feature -

from Claim 36 at (b) and from Claim 88 at (b)

"wherein the polymer - (1) contains ester groups and free carboxylic acid groups, (2) is partially solubilized due to the action of the base, and (3) has a solubilization pH greater than about pH 5.5"

then the cited combination of references would properly support the rejection if and only if Rheaume fairly teaches or suggests the features described in the quoted language. Rheaume,

however, does not provide this basis. The Examiner's attention is respectfully directed to the following portions of Rheume: column 14, claim 1, lines 53-60. Rheume states that the polymer is precipitated out of solution by "modifying the charge of a sufficient quantity of the functional groups of the charged polymer by adding a precipitant". In direct contrast to this, in the present invention, the polymer is partially solubilized. A partially solubized polymer cannot properly be viewed as equivalent to nor suggested by a precipitated-out polymer. More particularly, a partially-solubilized polymer is not precipitated out of solution because it both (a) remains in suspension within the aqueous mixture; and (b) is partially-solubilized [i.e., is partially-dissolved] within the aqueous mixture. The precipitation technique of Rheume uses the transition of a polymer from the state of being dissolved within a solution to the state of being a solid which has dropped out of the solution and is thus no longer dissolved.

For the reasons presented above, Applicants respectfully request favorable reconsideration and withdrawal of the 35 U.S.C. § 103(a) Rejection based upon Bohm/Ahmed/Miller in view of Rheume.